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In The

# SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 647

THE STATE OF WISCONSIN on the Relation of American Motors Corporation, a foreign corporation,
*Respondent,*

*vs.*

INDUSTRIAL COMMISSION OF THE STATE OF WISCONSIN
*Respondent,*

ROBERT BORUM,
*Petitioner.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

*To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Petitioner Robert Borum prays that a Writ of Certiorari issue to review the Order of the Supreme Court of Wisconsin dated September 4, 1964, dismissing Petitioner's appeal.

## OPINIONS BELOW

The opinion of the Supreme Court of Wisconsin, is attached hereto as Appendix, page 10.

## JURISDICTION

The jurisdiction of this court is invoked under the provisions of 28 U. S. Code, Section 1257(3). The Courts of Wisconsin, contrary to the provisions of Article I, Section 9 of the Wisconsin Constitution refuse to grant petitioner a full rehearing and remedy for all injuries sustained to his person in an industrial accident. The failure to grant petitioner a full hearing also violates Article XIV, Section I, United States Constitution in that petitioner is being deprived of rights without due process of law.

## QUESTION PRESENTED

The question is whether the Courts of the State of Wisconsin, by denying petitioner a hearing as to all of his injuries incurred in an industrial accident, March 31, 1955, have in substance denied him that remedy at law or due process of law as guaranteed by Article XIV, Section I, United States Constitution and Article I, Section 9, Wisconsin Constitution.

The Courts of the State of Wisconsin deny a person injured in an industrial accident the right to more than one hearing, and they hold that the Industrial Commission of the State of Wisconsin is without jurisdiction to entertain a request for an additional hearing for injuries arising out of the original accident but medically unascertained or unascertainable at the time of its original hearing.

## STATUTES INVOLVED

*United States:*

The Fourteenth Article, Section I of the United States Constitution the relevant portion is as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; . . ."

*Wisconsin:*

The first Article, Section 9 of the Wisconsin Constitution states:

"Every person is entitled to a certain remedy in the laws for all injuries, or wrongs, which he may receive in his person, property or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws."

## STATEMENT OF THE CASE

The petitioner was injured in the course of his employment on March 31, 1955. In a September 7, 1955, hearing before an examiner of the Industrial Commission of the State of Wisconsin, the main concern was with petitioner's claim for permanent disability to his stomach, back, and legs. There was limited testimony relating to whether or not petitioner's symptoms were psychoneurotically based. On November 30, 1955, the Industrial Commission of the State of Wisconsin reviewed the examiner's findings and order and issued a final order affirming his findings and order. This final order found no permanent disability.

The petitioner appealed to the Circuit Court of Dane County for judicial review. This court affirmed the Industrial Commission of the State of Wisconsin's order, and judgement was entered May 19, 1958. Subsequently this judgement was affirmed by the Supreme Court of the State of Wisconsin on January 2, 1959 (*Borum vs. Industrial Commission,* 6 Wis. (2d) 168).

On March 10, 1959, petitioner applied for Workman's Compensation due to a traumatic neurosis which arose out of injuries which he sustained in the accident of March 31, 1955. Whereupon, the employer challenged the Industrial Commission of the State of Wisconsin's jurisdiction of petitioner's application. On July 13, 1959, an Industrial Commission of the State of Wisconsin examiner heard argument solely on the question of jurisdiction. The examiner dismissed petitioner's application on September 4, 1959, and held that the Industrial Commission lacked jurisdiction. The Industrial Commission reviewed this order and affirmed it in all respects on October 7, 1959.

The petitioner sought judicial review in the Circuit Court of Dane County, which court confirmed in all respects the findings and order of the Industrial Commission of the State of Wisconsin and entered judgement November 9, 1960.

An appeal of this judgement to the Supreme Court of the State of Wisconsin was denied May 2, 1961, *Borum vs. Industrial Commission,* 13 Wis. (2d) 570. A subsequent motion for re-hearing was denied June 27, 1961.

On September 23, 1961, petitioner filed a Petition for a Writ of Certiorari to the Supreme Court of Wisconsin in the Supreme Court of the United States of America. This petition was denied December 4, 1961.

Petitioner sought a complete hearing on all of his injuries before the Industrial Commission of the State of Wisconsin on April 28, 1964, solely on the question of jurisdiction. The employer sought and obtained an absolute Writ of Prohibition in the Circuit Court of Dane County, (Appendix, page 8), Judgement filed April 24, 1964, (Appendix page 9). Whereupon petitioner ap-

pealed to the Supreme Court of the State of Wisconsin. This appeal was dismissed September 4, 1964, (Appendix page 10).

## REASONS FOR GRANTING THE WRIT

Petitioner respectfully submits that the Supreme Court of Wisconsin erred in dismissing his appeal. Petitioner is incapacitated from injuries he received on March 3rd, 1955. He is currently receiving hospital treatment for these injuries and has irrefutable medical proof that his current illness is a direct result of the earlier, on-the-job injuries. He has undergone numerous operations for a stomach ulcer and for back injuries. The Industrial Commission of the State of Wisconsin committed error by not making a finding on the extent of injury to petitioner's back and leg, which still cause him suffering. These errors have not been corrected despite previous appeals. Thus petitioner has not been afforded effective redress or remedy for his wrongs.

The intention of all Workman's Compensation Laws is to protect the rights of injured workmen and to provide for medical and money benefits to employees injured by reason of their work. Article I, Section 9 of the Wisconsin Constitution guarantees a remedy in law to all persons for injuries which they receive. To permit the petitioner to be deprived of an opportunity to seek redress for all of the effects of his injuries from the Industrial Commission of the State of Wisconsin and the Courts is to deny him what the Constitution guarantees. The original hearing was inadequate in that it did not cover the full extent of the petitioner's injuries. The order emanating from such hearing is premature in its finality and should not be permitted to stand. Since the

petitioner has a right to proceed against his employer, this right should not be restricted so that he must manifest and prove even the most complicated effects of injuries on the spot or sustain injustice forever. Such a restriction would rob the Constitution of any meaning because a "certain remedy" would in fact be so uncertain as to be impossible. *Scholberg v. Itnyre,* 264 Wis. 211 (1953) 58 N.W. (2d) 698, holds that Article I, Section 9 of the Wisconsin Constitution is applicable where there is an infringement of a legal right or failure to discharge a legal duty. Petitioner's legal right to Workman's Compensation has been infringed or not fully discharged by the failure of the Commission to consider all of petitioner's injuries.

Petitioner's rights are infringed upon by the Commission and Courts' not maintaining jurisdiction in the instant case. Such an infringement violates Article XIV, Section I of the United States Constitution because the petitioner is denied a full and complete determination of the merits of his case. His privileges as a citizen are thus abridged. The New York Compensation Act recognizes and appreciates this problem and solves it granting continuing jurisdiction to their Compensation Board. *Stimburis v. Leviton Mfg. Co.* (1959), 5 N.Y. (2nd) 360, 157 N.E. (2d) 621, and *Roder v. Northern Maytag Co.* (1948), 297 N.Y. 196, 78 N.E. (2nd) 470 support the position of granting reconsideration of the extent of injuries notwithstanding previous final orders dismissing compensation applications.

## CONCLUSION

Petitioner submits that the dismissal of his appeal in the instant case violates his rights to "due process" under the Constitution of the United States and a "certain remedy" under the Constitution of the State of Wisconsin. Wherefore, your petitioner prays that a Writ of Certiorari be issued out of and under the seal of the Honorable Court and the ruling of the Supreme Court of Wisconsin reversed.

*Respectfully submitted,*

ROBERT BORUM, *Petitioner*

By:

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## APPENDIX A

## JUDGMENT ALLOWING ABSOLUTE WRIT OF PROHIBITION

(Formal Parts Omitted)

An alternative writ of prohibition having been duly issued out of this Court on the 14th day of April, 1964, commanding the Industrial Commission of Wisconsin, the above named respondent, to desist and refrain from any further proceedings in a certain proceeding in which one Robert Borum is the applicant and American Motors Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland and licensed, as a foreign corporation, to transact business within the State of Wisconsin, is the respondent, which proceeding is pending before the said Industrial Commission of Wisconsin and is identified as File E32-5900, and further commanding the said respondent, Industrial Commission of Wisconsin, to show cause on the 22nd day of April, 1964, at 1:30 o'clock in the afternoon of said day, why the said respondent, Industrial Commission of Wisconsin, should not be absolutely restrained from any further proceeding in the said matter pending before it, and the said alternative writ having been served upon Stephen J. Reilly, the Secretary of the Industrial Commission of Wisconsin, on the 14th day of April, 1964, as appears from his admission of service on the original alternative writ, which is on file herein, and the said alternative writ having been served upon Lloyd A. Barbee, the attorney for the said Robert Borum, as appears from the admission of service on the original alternative writ, which is on file herein, and the matter having come on for hearing in the above named Court on the 22nd day of April, 1964, at 1:30 o'clock in the afternoon,

Alfred E. LaFrance and Adrian P. Schoone of the law firm of LaFrance, Thompson, Greenquist, Evans and Dye having appeared for and on behalf of the relator, American Motors Corporation, and Cecil T. Rothrock of the legal department of American Motors Corporation having appeared, and Norman J. Taugher, one of the examiners of the Industrial Commission of Wisconsin, having appeared with the original file of the said Commission, and no one having appeared for or on behalf of the said Robert Borum, and the said Robert Borum not having appeared, and the Court having waited until 2:10 o'clock in the afternoon of said day before proceeding to hear the matter, and no one having moved to quash the said alternative writ or otherwise made a return to the said alternative writ, and the said Norman J. Taugher having informed the Court that the respondent, Industrial Commission of Wisconsin, had no objection to the granting of an absolute writ of prohibition, and Alfred E. LaFrance having argued the said matter and having filed a written memorandum brief on behalf of the said American Motors Corporation in support of the granting of an absolute writ of prohibition, and the Court having examined the record and the verified petition for an alternative writ of prohibition of Alfred E. LaFrance, which is of record herein, and after being duly advised in the premises and having ordered and directed from the bench that an absolute writ of prohibition issue herein and having, of even date hereof, signed a written order granting an absolute writ of prohibition:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

FIRST: That an absolute writ of prohibition issue forthwith commanding the said Industrial Commission

of Wisconsin to absolutely refrain from any further proceedings in the proceeding pending before it in which Robert Borum is the applicant and American Motors Corporation is the respondent;

SECOND: That said absolute writ of prohibition, which is incorporated herein and a part hereof, be served upon the Industrial Commission of Wisconsin and a copy be served upon Lloyd A. Barbee, the attorney of record for the said Robert Borum.

Dated: April 24th, 1964.

BY THE COURT:

/s/ Jean Johnson Kirley
Clerk of Circuit Court
by /s/ Marion Mindrum

## APPENDIX B

ORDER OF SEPTEMBER 4, 1964
(Title Omitted)

Sir:—The Court today announced decision in your case as follows:

#150 State ex rel American Motors v. Industrial Commission; Robert Borum, Appellant

ORDERED that the appellant's motion to amend his notice of appeal be and the same is hereby denied.

FURTHER ORDERED that the respondent's motion to dismiss the appeal be and the same is hereby granted, and the appeal is hereby dismissed.

FURTHER ORDERED that the petitioner-respondent shall recover motion costs.

*Respectfully yours,*

*FRANKLIN W. CLARKE*
Clerk of Supreme Court.

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

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## RESTATED QUESTIONS

Respondents believe that the following questions more accurately phrase the issues to be decided by this Court than does the question set forth in the Petition for a Writ of Certiorari (p. 2).

1. Whether the decision and order of the Wisconsin Supreme Court dismissing petitioner's appeal to that Court as improperly taken from a non-appealable order of the Wisconsin Circuit Court, presents a federal question which the United States Supreme Court has jurisdiction to review.

2. If the answer to Question 1 is "yes", did the Wisconsin Supreme Court deprive appellant of life, liberty or property, without due process of law by dismissing his appeal from an order for judgment, which was not an appealable order within the scope of §274.33 of the Wisconsin Statutes?

## STATEMENT OF CASE

Pursuant to Rule 40(3) of the Revised Rules of this Court, it is necessary to supply significant omissions in the statement of petitioner.

The Court will recognize from its decision in *Robert Borum v. Ind. Comm. of Wis.*, 368 U.S. 926 (1961), that the instant petition is the second effort to obtain a writ of certiorari in connection with the industrial accident of Robert Borum occurring on March 31, 1955. The following sequence of legal procedures employed by Borum through various attorneys, all connected with that injury, are hereinafter set forth in chronological order:

### A. The Accident.

On the 31st day of March, 1955, Borum sustained an industrial accident while in the employment of American Motors Corporation, which resulted in personal injuries.

### B. First Application.

On the 3rd day of May, 1955, Borum filed with the Wisconsin Industrial Commission a formal written application, through his then counsel, Roy O. Conen, 152 W. Wisconsin Avenue, Milwaukee, Wisconsin, by which he sought the adjustment of all claims that he might possess, under the provisions of the Wisconsin Workmen's

Compensation Act, for any injury that he sustained as a result of said accident.

### C. First Hearing.

On the 7th day of September, 1955, a hearing was held before Examiner L. B. Retelle of the Industrial Commission. Following this hearing on the 7th day of October, 1955, said Examiner made certain findings of facts and issued an order directing American Motors Corporation to make certain payments of compensation to Borum and to make certain payments for his medical and hospital expense.

### D. First Petition for Review.

Following the issuance of the said order, Borum filed with the Industrial Commission a petition for a review of the said findings and order, and on the 30th day of November, 1955, the Industrial Commission, acting as a body, issued a final order affirming, in all respects, the said findings and order of Examiner Retelle.

### E. The Award Was Complied With.

American Motors Corporation complied with said order and made all of the payments therein required.

### F. First Appeal to Circuit Court.

Borum, through new counsel, A. L. Tilton, 845 North 11th Street, Milwaukee, Wisconsin, commenced an action in the Circuit Court of Dane County on the 24th day of December, 1955, seeking a judicial review of said final order. Pending the hearing on this appeal, Attorneys Coggs & McCormick, 2679 North Teutonia Avenue, Milwaukee, took over the Circuit Court appeal from Attorney Tilton and handled it to a conclusion. On the 18th day

of April, 1958, the Honorable Edwin M. Wilkie, Circuit Judge of Dane County, filed a written decision directing that the findings and order of the Industrial Commission dated the 30th day of November, 1955, be confirmed and a judgment of confirmation entered. On the 19th day of May, 1958, a judgment was duly entered and filed in the Circuit Court of Dane County confirming, in all respects, said order.

### G. First Supreme Court Appeal.

Subsequent thereto, Borum prosecuted an appeal from said judgment to the Supreme Court of the State of Wisconsin. The Brief of Borum's counsel fully apprised the Court of his claim of disability stemming from a psychoneurotic factor. Reply Briefs filed by counsel herein all discussed that matter. On the 2nd day of January, 1959, the Supreme Court of Wisconsin handed down and filed a written decision affirming, in all respects, the said judgment. *Borum v. Industrial Commission,* 6 Wis. 2d 168.

### H. No Motion for Re-Hearing.

Borum filed no motion for re-hearing, and consequently the decision of the Supreme Court of Wisconsin became final on and after the 23rd day of January, 1959, pursuant to the provisions of §251.37 of the Wisconsin Statutes then obtaining.

### I. Second Application.

On the 10th day of March, 1959, Borum, through Attorney H. R. George, 2364 North Twelfth Street, Milwaukee, Wisconsin, filed a second written application with the Industrial Commission in which he again sought the adjustment of all claims that he might have arising out of the accident of the 31st day of March, 1955. In

this second application, Borum specifically stated that his disability, for which compensation was being claimed, was due to a traumatic neurosis, arising out of injuries sustained in the accident that occurred on the 31st day of March, 1955.

### J. Answer to Second Application.

In its answer to this second application, American Motors Corporation objected to the jurisdiction of the Industrial Commission and specifically set forth the multiple reasons why the Industrial Commission possessed no jurisdiction with regard to any issue or claim related to any injuries sustained by Borum as a result of the accident of the 31st day of March, 1955.

### K. Hearing on Second Application.

On the 13th day of July, 1959, a hearing was held before Examiner G. W. Otto of the Industrial Commission. At this hearing, no testimony was offered, but an extensive statement was made into the record as to why the Industrial Commission possessed no jurisdiction with regard to any issue or claim that Borum might have because of any injuries sustained in the accident of the 31st day of March, 1955.

### L. Order Following Second Hearing.

On the 4th day of September, 1959, Examiner Otto made certain findings of facts and issued an order directing that the application of Borum filed on the 10th day of March, 1959, be dismissed. The significant findings, upon which said dismissal order was based, were as follows:

> "The Examiner finds that the rights and liabilities of the parties were finally adjudicated . . . that the

Industrial Commission does not have jurisdiction with regard to any issue or claim related to the injury of March 31, 1955."

### M. Second Petition for Review.

Thereafter, Borum, through Attorney A. L. Tilton, mentioned above, filed with the Industrial Commission a petition for review of said findings and order of the 4th day of September, 1959.

### N. Final Order of the Industrial Commission.

On the 7th day of October, 1959, the Industrial Commission, acting as a body, made a final order affirming in all respects the said findings and order of Examiner Otto.

### O. Second Appeal to Circuit Court.

Thereafter, on the 31st day of October, 1959, Borum commenced an action in the Circuit Court of Dane County, seeking a judicial review of said final order of the Industrial Commission of the 7th day of October, 1959. On the 13th day of October, 1960, the Honorable Norris Maloney filed a written decision directing that the findings and order of the Industrial Commission dated the 7th day of October, 1959, be in all respects confirmed. On the 9th day of November, 1960, pursuant to said written decision, a judgment was duly entered and filed in the Circuit Court of Dane County, confirming, in all respects, the said final order of the 7th day of October, 1959.

### P. Second Appeal to Supreme Court.

Subsequent thereto Borum prosecuted an appeal from the second judgment to the Supreme Court of the State of Wisconsin. On the 2nd day of May, 1961, the Supreme

Court of Wisconsin handed down and filed a written decision affirming, in all respects, the said judgment. *Borum v. Ind. Comm.,* 13 Wis. 2d 570.

### Q. Motion for Re-Hearing.

On May 19th, 1961, Borum moved for a re-hearing of the decision of the Supreme Court of Wisconsin of the 2nd day of May, 1961. The basis for this motion was that the failure of the Industrial Commission to accept jurisdiction and proceed on a second or subsequent application for additional compensation following a final award, was violative of both Article I, Sec. 9 of the Wisconsin Constitution, and Article XIV, Sec. 1 of the United States Constitution.

### R. Motion for Re-Hearing Denied.

On the 27th day of June, 1961, the Supreme Court of the State of Wisconsin denied the motion for re-hearing.

### S. Petition for Writ of Certiorari.

On the 23rd day of September, 1961, Borum filed a petition in the Supreme Court of the United States of America for a writ of certiorari to the Supreme Court of Wisconsin.

### T. Petition Denied by United States Supreme Court.

On the 4th day of December, 1961, the Supreme Court of the United States of America denied Borum's petition for a writ of certiorari. 368 U.S. 926.

### U. Third Application.

On the 11th day of March, 1964, Borum, through Attorney Lloyd A. Barbee, 2606 West Fond du Lac Avenue, Milwaukee, Wisconsin, filed a third written application with the Industrial Commission in which he once again sought the adjustment of all claims that he might have arising out of the accident of the 31st day of March, 1955. The Industrial Commission scheduled a hearing on said application to determine whether it had jurisdiction with respect to the matters alleged in the third application for the 28th day of April, 1964.

### V. Alternate Writ of Prohibition Obtained.

A petition of one of the attorneys for American Motors Corporation for an alternative writ of prohibition commanding the Industrial Commission to refrain from further proceedings with respect to the third application pending a hearing before the Court on April 22, 1964, was presented to the Honorable Richard W. Bardwell, presiding Judge of the Circuit Court for Dane County, Wisconsin, on the 14th day of April, 1964. On the same day, an order for issuance of the alternative writ of prohibition was signed by Judge Bardwell, and an Alternative Writ of Prohibition immediately issued from the clerk of said court. Copies of said Writ were served upon the Secretary of the Wisconsin Industrial Commission and Attorney Barbee, attorney for Borum.

### W. Judgment Granted Allowing Absolute Writ of Prohibition.

On the 22nd day of April, 1964, a hearing was held before Circuit Judge Bardwell with respect to the order of the Court directing the Industrial Commission to show cause why it should not be restrained from further pro-

ceedings with respect to the third application. Borum did not appear at said hearing, nor did any attorney on his behalf. After hearing a representative of the Industrial Commission, and counsel for American Motors Corporation, the Court ordered that an Absolute Writ of Prohibition issue, and signed such an Order Granting Judgment, in accordance with the provisions of Wis. Stat. §293.12, on April 24, 1964. Judgment allowing the absolute writ of prohibition was then immediately signed by the clerk of Circuit Court for Dane County on the same date. Copies of said Judgment were served on the Secretary of the Industrial Commission and Attorney Barbee, attorney for Borum, on the same date.

**X. Appeal is From Order, Not Judgment.**

On the 3rd day of June, 1964, Attorney Barbee served "Notice of Appeal to Supreme Court" upon counsel for American Motors Corporation. In said notice it was stated that the appeal was from the *Order* of Judge Bardwell dated April 24, 1964. By communication of July 16, 1964, Franklin W. Clarke, Clerk of the Supreme Court of Wisconsin, advised the attorneys for American Motors Corporation that the record had been filed with the Wisconsin Supreme Court on said date.

**Y. Respondents Moved to Dismiss Appeal.**

On July 24, 1964, a motion of American Motors Corporation to dismiss the attempted third appeal of Borum to the Wisconsin Supreme Court was served upon Borum's counsel. The motion was served on the Wisconsin Attorney General and filed with the Clerk of the Wisconsin Supreme Court on July 27, 1964.

### Z. Third Appeal to Wisconsin Supreme Court Dismissed.

On September 4, 1964 the Clerk of the Wisconsin Supreme Court announced they had dismissed the attempted appeal on that date.

## ARGUMENT

### THE DECISION OF THE WISCONSIN SUPREME COURT WAS BASED ON AN ERROR OF PROCEDURE MADE BY PETITIONER. AS A CONSEQUENCE, NO FEDERAL QUESTION IS PRESENTED FOR REVIEW.

The instant Petition contains no new arguments in support of it, not contained in the Petition filed on October 23, 1961. It does reflect the same jurisdictional deficiencies apparent in the earlier Petition. There is no specification of or reference to the stage in the extended litigation before the Industrial Commission or the Courts at which any federal question was timely and properly raised by petitioner. There is no showing that the Wisconsin Supreme Court passed upon any federal question in dismissing the appeal of petitioner to that forum. These failures constitute violation of Rule 23(1)(f) of the Revised Rules of this Court. The points and authorities contained in the Brief of the respondent filed with this Court in accordance with Rule 24 and in opposition to the earlier Petition, are applicable here.

However, mention is made of *Booth Fisheries Co. v. Ind. Comm.*, 271 U.S. 208 (1926), where this Court, in affirming the decision of the Wisconsin Supreme Court (185 Wis. 127, 200 N.W. 775 (1924)), held that a litigant electing to accept the benefits of the Wisconsin Workmen's Compensation Act could not escape its burdens by

asserting that it is unconstitutional. This precedent was relied upon by respondents in defeating the motion for rehearing brought by Borum in the Wisconsin Supreme Court after the second of his three unsuccessful appeals to that Court.

An additional reason for the denial of the instant Petition is manifest on the face of it. Appendix B (p. 10), reflects that the Wisconsin Supreme Court granted the motion of respondents to dismiss the appeal of Petitioner. If Rule 21(1) of the Revised Rules of this Court has been observed by petitioner, the record on file herein would show the basis for that motion. The motion to dismiss the appeal was predicated on the fact that the attempted appeal to the Wisconsin Supreme Court was taken from a non-appealable order for judgment of the Circuit Court of Dane County. Because the appeal was not properly taken from the judgment allowing the writ of prohibition absolute, it did not conform to §274.33 of the Wisconsin Statutes. The statute permits appeals from only those orders preventing judgments from which appeals could otherwise be taken.

The Wisconsin Supreme Court had no alternative but to dismiss the appeal because of the procedural irregularity, and thus could give no consideration to the substantive aspects of the appeal. Clearly, the Wisconsin Supreme Court did not consider any federal aspect in reaching their decision.

Because the action of the State Court is supported by Wisconsin statutory law governing appellate practice, no federal question is presented which would permit review by this court. The cases so holding are abundant, and the following citations are merely representative.

*Ellis v. Dixon*, 349 U.S. 458 (1955);

*Hedgebeth v. N. Carolina*, 334 U.S. 806 (1948);

*Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945);

*Milk Wagon Drivers Union of Chicago Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941);

*Texas & New Orleans R.R. Co. v. Miller*, 221 U.S. 408 (1911);

*Northern Pacific Railroad Co. v. Patterson*, 154 U.S. 130 (1894);

*Tripp v. The Santa Rosa Street Railway Co.*, 144 U.S. 126 (1892);

*French v. Hopkins*, 124 U.S. 524 (1888).

The requirements of Title 28, U.S. Code, §1257, are not satisfied by the instant petition. There is no jurisdictional basis on which to grant the relief sought therein.

## CONCLUSION

For the reasons stated, the United States Supreme Court does not have jurisdiction to grant a writ of certiorari in response to the Petition. It is respectfully submitted that the Petition should be denied.

*Respectfully submitted,*

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In The

# SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 647

THE STATE OF WISCONSIN on the Relation of American Motors Corporation, a foreign corporation,

*Respondent,*

*vs.*

INDUSTRIAL COMMISSION OF THE STATE OF WISCONSIN

*Respondent,*

ROBERT BORUM,

*Petitioner.*

## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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*Petitioner.*

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## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Petitioner prays that this Court grant a rehearing of its Order of January 18, 1965, denying the petition for writ of certiorari, — U.S. —, and that a writ of certiorari be issued as prayed for in the petition filed and docketed November 2, 1964.

## REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

The United States Supreme Court has jurisdiction under ARTICLE XIV, Section I, of the United States Constitution. The procedure used by The Industrial Commission of the State of Wisconsin and the Courts of Wisconsin did not adequately protect the constitutional rights of the Petitioner. Wisconsin Statutes Section 274.11(4) must be read in conjunction with Wisconsin Statutes Section 269.51. Any alleged irregularity or defect in the NOTICE OF APPEAL TO THE WISCONSIN SUPREME COURT could be cured since the appeal was timely and made in good faith.

*Baumgarten v. Jones*, 21 Wis. 2d 467, 124 N.W. 2d 609 (1963), and *In Re Burns' Estate*, 23 Wis. 2d 175, 127 N.W. 2d 239 (1964).

The petitioner will be permanently deprived of an opportunity to seek redress for all of the effects of his injuries due to an industrial accident if he is not allowed a full and complete adjudication. Since the original administrative hearing granted the petitioner was inadequate, in that it did not cover entire extent of his injuries, the order emanating therefrom was premature in its finality and must not be permitted to stand. It is unjust that an injured workman should have his rights so restricted that he must manifest and prove even the most complicated effects of such injuries on the spot or sustain the resulting injuries permanently without compensation.

## CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing

be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Wisconsin reversing its ruling.

*Respectfully submitted,*

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## CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

LEONARD S. ZUBRENSKY
*Counsel for Petitioner.*